

REMARKS

Claims 1-16 and 18-21 are pending in this application after entry of this Amendment. Claims 1-16 are rejected. Claims 18-21 are newly added. Claim 17 was previously canceled without prejudice or disclaimer of the subject matter therein. No new matter has been added. It is respectfully submitted that the pending claims define allowable subject matter.

Claim 12 has been rejected under 35 U.S.C. § 112, second paragraph as being indefinite for reciting the phrase “for example.” Applicant has amended claim 12 to remove the recitation of “for example.” Accordingly, Applicant submits that the rejection should be withdrawn.

Claims 1-9 and 12-16 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Weston et al. (U.S. Patent 6,256,822), hereafter Weston. Claims 10 and 11 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Weston. Applicant traverses these rejections for at least the reasons set forth below.

Independent claim 1 has been amended to recite a mattress including “a resilient body having at least one upper surface portion for supporting a person”, “a plurality of shallow surface channels disposed in the at least one upper surface portion and extending parallel thereto” and “wherein said at least one upper surface portion is upwardly inclined, and wherein along at least a part of the length of said surface channels in the inclined upper surface portion, a direction of elongation of said surface channels is inclined relative to the horizontal.” Applicant submits that the cited Weston reference fails to describe the claimed mattress.

In particular, Weston describes a main mattress core 14 and side bolsters 12. However, Applicant submits that although the bolsters 12 have inclined surfaces, the bolsters 12 are not configured to support a person. The Weston reference states that the bolsters 12 form peaks that prevent a patient from rolling off the main mattress core 14 (i.e., the supporting surface) by *guiding* a patient from rolling off the support surface (see, e.g., Weston, col. 1, lines 63-67; col. 2, lines 39-42 and 53-66; and claim 1). Thus, the bolsters 12 are not support surfaces for

supporting a person, but are formed from a stiffer material to maintain a patient resting on the mattress support surface, namely the mattress core 14 (see, e.g., Weston, col. 5, lines 37-39). Thus, in Weston, the bolsters 12 are configured to prevent a person from rolling off the mattress rather than supporting the weight of the person. A person is supported on the mattress core 14 and would not come into contact with the bolsters 12 except to guide a person back to a supported position on the mattress core 14. Accordingly, the bolsters 12 are containing/restraining members, rather than support members with supporting surfaces. Thus, the surface of the mattress core 14 that is the support surface, is flat, such that the ridges or cuts are not inclined, but are parallel to the horizontal. In contrast, the claimed invention requires that the at least one upper surface portion for supporting a person includes inclined surface channels.

Moreover, Applicant submits that the ridges 30 and cuts 39 in the topper 28 are not channels as required by the claimed invention. The ridges 30 or cuts 39 are configured to prevent portions of the topper 28 from compressing when an adjacent portion is compressed. A ridge or cut is not the same as a channel.

Accordingly, Applicant submits that the Weston reference fails to describe at least one upper surface portion for supporting a person and including a plurality of surface channels and along at least part of the length of the surface channels in the at least one inclined upper surface portion, the direction of elongation of the surface channels is inclined to the horizontal. Thus, claim 1 is allowable for at least the reasons set forth above.

Applicant submits that dependent claims 2-16 and newly added dependent claims 18-21 recite further subject matter not anticipated or rendered obvious by the cited Weston reference. For example, the Office Action asserts at page 3, and with respect to claim 5, that Weston shows in Figure 1A at least some of the surface channels extending diagonally so as to make an angle of less than 90° with the axis of elongation. Applicant submits that the ridges extend perpendicular to the axis of elongation and the cuts extend parallel to the axis of elongation. Applicant submits that none of these ridges or cuts extends in a diagonal direction relative to the axis of elongation. Moreover, the ridges and cuts are linear when viewed from above and not non-linear as required

by claim 6. With respect to the rejection of claim 7, the Office Action cites the cuts 39 as both the surface channels and connecting channels. As the cuts 39 do not cross each other, the cuts 39 cannot be connecting channels, and further, not transverse to the axis of elongation as recited in claims 9 and 14. Regarding claim 12, Weston in the portion cited in the Office Action (namely col. 4, lines 35-42) merely states that some ridges may be smaller than other ridges and not that the cross sectional area varies along the length of a channel.

Additionally, with respect to the rejection of claims 10 and 11, Applicant submits that the conclusory statements in the final Office Action, at pages 5-6, that the claimed dimensions are obvious because discovering the optimum or workable ranges involves only routine skill in the art is not sufficient to support an obviousness rejection. In particular, the Board of Patent Appeals and Interferences has held that after the decision by the Court of Appeals for the Federal Circuit in *KSR Int'l v. Teleflex*, 127 S.Ct. 1727, 1734 (2007), a *per se* rule for obviousness cannot be relied upon as support in an obviousness rejection (see, *Ex Parte Bozmoski*, Appeal 2008-0092, holding that the mere fact that a given structure is integral does not mean that it would be obvious to split the structure into pieces or parts). The BPAI specifically held that such arguments “reflects a discredited *per se* rule for obviousness and cannot be relied upon as support in this obviousness rejection.” *Bozmoski* at page 4.

Moreover, based on the manner in which the § 103 rejection is worded, Applicant is unsure if the Examiner is taking Official Notice that the elements recited in claims 10 and 11 would be obvious to one of ordinary skill in the art. Because of the manner in which the elements are worded, Applicant is unsure if these statements are intended to constitute Official Notice.

If the Office Action is taking Official Notice, Applicants respectfully traverse each of the assertions. The argument that the recited elements are obvious to one of ordinary skill in the art is unsupported by the cited references. If the claim elements were well known as the Office Action contends, the elements would appear in the prior art. But, even after the exhaustive search of the prior art, no reference disclosing these claim elements has been provided.

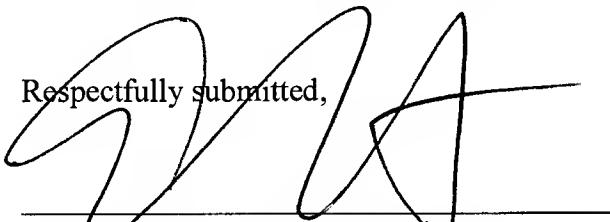
Consequently, Applicant respectfully submits that the assertions in the Office Action are not commonly known in the art and any finding of Official Notice is respectfully traversed. According to section 2144.03 of the MANUAL OF PATENT EXAMINING PROCEDURES, the Examiner is now obligated to cite references or provide some other documentary evidence in support of the assertions that the elements recited in the claim are obvious to one of ordinary skill in the art. Alternatively, if the Examiner's assertions are based on facts within the personal knowledge of the Examiner, the facts must be supported by an affidavit from the Examiner.

Applicant further submits that dependent claims 2-16 and 18-21 are allowable based at least on the dependency of these claims from independent claim 1.

There may be additional and/or alternative reasons to the reasons argued herein and/or herebefore that claims 1-16 and 18-21 are each patentable over the cited reference. Without waiver of any additional and/or alternative reasons, Applicant reserves the right to argue any additional and/or alternative reasons hereafter.

In view of the foregoing remarks, it is respectfully submitted that the cited references neither anticipate nor render obvious the claimed invention and the pending claims in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

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Respectfully submitted,

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